



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-2937

Dear Mr. Bost:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 120361.

The Texas Department of Human Services (the "department") received a request for information concerning a nursing facility administrator complaint filed against him. You assert that the resident's and complainant's identities are made confidential by the common-law right to privacy and the informer's privilege respectively, and therefore are excepted from required public disclosure under section 552.101 of the Government Code. Government Code section 552.101 excepts from disclosure information that is made confidential by law. You have submitted the requested information to this office for review.

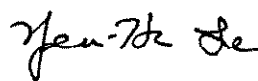
The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). You state that you have released most of the requested information. However, you seek to withhold the complainant's and resident's identities. In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A claim under the informer's privilege may be waived by the governmental body since the privilege belongs to the government. *See* Open Records Decision No. 549 at 6 (1990). We conclude that the informer's privilege is not a compelling exception in this instance and, therefore, may not be used to withhold the complainant's identifying information from required public disclosure under section 552.101.

Information made confidential by law is a compelling reason that overcomes the presumption of openness. The identities of Medicare and Medicaid patients are made

confidential by federal law. *See* Open Records Decision No. 487 (1988) (names of Medicare and Medicaid patients must be withheld in accordance with 42 C.F.R. § 401.126). Thus, you must withhold the resident's name from the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 120361

Enclosures: Submitted documents

cc: Mr. Terry Rowan
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(w/o enclosures)